

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

1010 RICHARDS STREET
P. O. BOX 3469
HONOLULU, HAWAII 96801

PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT ON

KAMAHANA PHASE II
Princeville, Hanalei
Kauai, Hawaii

REGISTRATION NO. 1172

IMPORTANT — Read This Report Before Buying

This Report Is Not an Approval or Disapproval of This Condominium Project

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project but may only take reservations therefore after

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: October 5, 1979
Expires: November 5, 1980

SPECIAL ATTENTION

A comprehensive reading by the prospective purchaser is urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION FILED SEPTEMBER 7, 1979 AND ADDITIONAL INFORMATION FILED AS OF SEPTEMBER 27, 1979. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES.

1. KAMAHANA PHASE II is a fee simple condominium project consisting of two (2) three-story buildings and one (1) two-story building, without basements, and comprising thirty-two (32) apartments and forty (40) parking stalls.

2. The Developer of the project has filed all documents and materials deemed necessary by the Commission for the registration of this proposed condominium project and the issuance of this Preliminary Public Report.

3. The basic documents (Declaration of Horizontal Property Regime, By-Laws of the Association of Apartment Owners and a copy of the approved Floor Plans) have not yet been recorded in the Bureau of Conveyances of the State of Hawaii.

4. No advertising and promotional matter has been filed pursuant to the rules and regulations promulgated by the Commission.

5. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of the Horizontal Property Act, Chapter 514A of the Hawaii Revised Statutes and the Condominium Rules and Regulations which relate to Horizontal Property Regime.

6. This Preliminary Public Report automatically expires thirteen (13) months after the date of issuance, October 5, 1979, unless a Final or Supplementary Public Report issues or the Commission, upon review of the registration, issues an order extending the period of this report.

7. This Preliminary Public Report is made a part of registration on KAMAHANA PHASE II condominium project. The Developer has the responsibility of placing a true copy of the Preliminary Public Report (yellow paper stock) and the Disclosure Abstract in the hands of all purchasers and prospective purchasers. Securing a signed copy of the Receipt therefor from each such person is also the responsibility of the Developer.

NAME OF PROJECT: KAMAHANA PHASE II

LOCATION: The approximately 3.599 acres of land to be committed to the regime is situated at Princeville, Hanalei, Kauai, Hawaii.

TAX MAP KEY: FOURTH DIVISION: 5-4-05-32

ZONING: R-10

DEVELOPER: AVANTI INVESTMENT & DEVELOPMENT CORPORATION, a Hawaii corporation, Suite 1222, 500-4th Avenue S. W., Calgary, Alberta, Canada, Phone (403) 263-3356 (Canada). Officers: Gene C. Patton, President; R. Keith Bell, Vice President; Robert J. Yoder, Secretary/Treasurer.

ATTORNEY REPRESENTING DEVELOPER: Hamilton, Gibson, Nickelsen, Rush & Moore (Attention: Walter Beh, II and Michiro Iwanaga), 20th Floor Hawaii Building, 745 Fort Street, Honolulu, Hawaii 96813, Phone 521-2611.

DESCRIPTION: The proposed Declaration of Horizontal Property Regime and plans submitted by the Developer indicate a fee simple condominium project consisting of thirty-two (32) apartments contained in two (2) three-story buildings and one (1) two-story building, without basements, constructed principally of wood.

The location and description of the various apartments of the project are as set forth in the Exhibit attached to this Preliminary Public Report.

The apartments have immediate access to the grounds of the project, or to a stairway leading to the grounds of the project.

The respective apartments shall not be deemed to include the undecorated or unfinished surfaces of the perimeter or party walls or interior load-bearing walls, the floors and ceilings surrounding each apartment or any pipes, wires, conduits or other utility or service lines running through such apartment which are utilized for or serve more than one apartment, the same being deemed common elements as hereinafter provided. Each apartment shall be deemed to include all the walls and partitions which are not load-bearing within its perimeter or party walls, doors and door frames, windows and window frames, the lanai air space (if any), the inner decorated or finished surfaces of all walls, floors and ceilings, and all fixtures originally installed therein.

The proposed Declaration of Horizontal Property Regime will provide for a merger with an adjoining project, the Kamahana Condominium Project, as follows:

"0. MERGER. Any provision of this Declaration to the contrary notwithstanding, the Fee Owner, at its sole option, may amend the Project by way of merger with the Kamahana Condominium Project, at any time up to, but not later than December 31, 1983, as hereinafter provided.

"1. The Project described herein is the second of two increments, the first being the Kamahana Condominium Project (hereinafter 'Phase I'), the Declaration of which was filed in the Bureau of Conveyances of the State of Hawaii in Liber 13281, Page 254, as amended. Phase I consists of 30 apartments, a cabana and a swimming pool, all as more particularly described in the aforesaid Declaration. The purpose of the merger provision of the paragraph 0 is to provide for the merger of Phase I and this Project just as though the two increments had been developed as a single project.

"2. Merger shall take effect only if the following conditions have been met:

(a) Recordation in the Bureau of Conveyances of the State of Hawaii of an amendment to the Phase I Declaration, allowing a merger of Phase I and this Project under terms consistent with those of this paragraph; and

(b) Recordation in the Bureau of Conveyances of the State of Hawaii by Fee Owner of a 'Certificate of Merger', which shall contain:

(i) A certification by a Hawaii registered architect or professional engineer that all of the apartments of this Project are substantially completed;

(ii) The common interest of each apartment after the completion of the merger; and

(iii) A revised plot plan showing the location of the buildings of the merged increments after completion of the merger.

"3. From and after the date of the recordation of the said Certificate of Merger the following consequences shall ensue:

(a) Use of Common Elements. The apartments in each of the merged increments shall have the right to use the common elements in each increment to the same extent and subject to the same limitations as are imposed upon apartments in each increment just as though the merged increments had been developed as one increment.

(b) Common Interests. Each apartment of the merged increments shall have appurtenant thereto an equal undivided percentage interest in the common elements of the merged increments: a 1/62 fractional interest (a 1.6129+ percentage interest).

(c) Board of Directors. The Boards of the increments immediately prior to the merger of the increments shall jointly govern the merged increments until a special meeting of the Association of the merged increments is called for the purpose of electing a new Board consisting of three (3) directors to govern the merged increments until the next annual meeting. The procedure for call of such special meeting shall be that set forth in the By-Laws attached as Exhibit C.

(d) Interpretation. For purposes hereof, each of the merged increments shall be treated as part of a single project developed as a whole from the beginning, and there shall be only one Association of Apartment Owners and one Board, and the Declaration of Horizontal Property Regime and By-Laws applicable to each merged increment shall be construed as one document applicable to the entire Project constituting the merged increments. It is the purpose hereof to provide that from and after the date of such merger all of the property so merged shall be treated as though it had been developed, divided into apartments, held, occupied and used by the owners thereof as a single undivided project.

"4. The Fee Owner shall have the right to execute, acknowledge and deliver any and all instruments necessary or appropriate for the purpose of carrying out the provisions and

exercising the rights, powers and privileges granted by this paragraph, all as the true and lawful attorney-in-fact of the respective owners from time to time of the apartments of this Project and Phase I."

COMMON ELEMENTS: One (1) freehold estate is designated in all remaining portions of the project, herein called the "common elements", including specifically but not limited to:

1. The land in fee simple;
2. All foundations, floor slabs, columns, girders, beams, supports, unfinished perimeter, party and load-bearing walls, roofs, entries, stairways, walkways, entrances and exits of said buildings;
3. All yards, grounds and landscaping;
4. All parking areas;
5. All pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations over, under and across the project which serve more than one apartment for services such as power, light, gas, water, sewer, telephone and television signal distribution, if any; and
6. Any and all other apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS: No part of the common elements, herein called the "limited common elements", are designated or set aside for the exclusive use of certain apartments.

INTEREST TO BE CONVEYED TO PURCHASERS: Documents filed with the Real Estate Commission indicate that the purchaser will secure an Apartment Deed, conveying an apartment and an undivided 3.125% interest in all common elements of the project prior to merger, if any, and the same proportionate share of all common profits and expenses of the project and shall be used for all other purposes including voting.

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The proposed Declaration provides that, except when a mortgagee has entered into possession of an apartment following (i) a default under a first mortgage, (ii) a foreclosure proceeding, or (iii) a conveyance in lieu of foreclosure, the apartments shall be occupied and used only as private dwellings by the respective owners thereof, their tenants, families, domestic servants and social guests, and for no other purpose; except that the apartments may also be rented for transient or hotel purposes. The owners of the respective apartments shall have the absolute right to lease such apartments subject to all provisions of the Declaration and the By-Laws attached thereto.

OWNERSHIP OF TITLE: A preliminary title report dated July 2, 1979, as updated by the report dated August 28, 1979, both issued by Long & Melone, Ltd., as submitted to the Commission, indicates that Consolidated Oil & Gas, Inc., a Colorado corporation, is the fee simple owner of the property to be committed to the regime. Developer will be purchasing the property pursuant to an option agreement, dated December 1, 1976 and submitted to the Commission, between the Developer and the present fee simple owner's predecessor in interest, Princeville Corporation.

ENCUMBRANCES AGAINST TITLE: Said title report dated July 2, 1979, as updated by the report dated August 28, 1979, both issued by Long & Melone, Ltd., and documents submitted to the Commission, provide that the following are encumbrances against title to the property:

1. For any taxes that may be due and owing and a lien on the land, reference is hereby made to the Office of the Tax Assessor of the Fourth Division, County of Kauai, Hawaii.

2. Portion of Easement R-2 (22 feet wide) for road and utility purposes over and across Lot 5-A, Unit XII, Parcel 1-B, Princeville at Hanalei.

3. Grant of Easement dated June 19, 1975, for roadway and utility purposes over, under and across Easement R-2, and recorded in the Bureau of Conveyances, State of Hawaii in Liber 10756 at Page 267.

4. Easement S-1 (10 feet wide), for sanitary sewer purposes, as shown on File Plan 1350.

5. Grant of Easement dated October 29, 1975, for sanitary sewer purposes under and across said Easement S-1, and recorded in the Bureau of Conveyances, State of Hawaii, in Liber 11034 at Page 88.

6. Easement R-2-B (15 feet wide) for road and utility purposes over and across Lot 5-A, Unit XII, Parcel 1-B, Princeville at Hanalei.

7. Declaration of Restrictions, Covenants and Conditions by Eagle County Development Corporation, dated March 1, 1971, recorded in the Bureau of Conveyances in Book 7444, Page 93, as amended.

8. The location of the seaward boundary of the property hereinbefore described and shoreline setbacks as affected by the law of the State of Hawaii.

PURCHASE MONEY HANDLING: A copy of the executed Escrow Agreement dated September 7, 1979, between Long & Melone Escrow, Ltd., as Escrow, and Developer has been filed with the Commission. On examination, the executed Escrow Agreement filed with the Commission is found to be in compliance with Chapter 514A, Hawaii Revised Statutes, and particularly Sections 514A-39, 514A-40 and 514A-63 through 514A-66 thereof.

Among other provisions, the executed Escrow Agreement states that a purchaser shall be entitled to a refund of his

funds, and Escrow shall pay said funds to said purchaser, without interest and less Escrow's cancellation fee, if purchaser shall in writing request refund of his funds and any one of the following shall have occurred:

(a) Escrow receives a written request from Seller to return to purchaser the funds of such purchaser then held hereunder by Escrow; or

(b) If purchaser's funds were obtained prior to the issuance of a Final Public Report and if there is any change in the building plans, subsequent to the execution of purchaser's contract, requiring the approval of the county officer having jurisdiction over the issuance of permits for construction, unless the purchaser has given written approval or acceptance of the change, or ninety (90) days have elapsed since the purchaser has accepted in writing the apartment or he has first occupied the apartment; or

(c) If the purchaser's funds were obtained prior to the issuance of a Final Public Report and the Final Public Report differs in any material respect from the Preliminary Public Report, unless the purchaser has given written approval or acceptance of the difference; or

(d) If the Final Public Report is not issued within one year from the date of issuance of the Preliminary Public Report; provided that if the Final Public Report is issued after the one year period and a copy of the Final Public Report is delivered to the purchaser either personally or by registered or certified mail with return receipt requested, notwithstanding any law to the contrary, the purchaser shall have thirty days from the date of delivery to exercise his right of refund and cancellation of obligation, after which period such right shall be deemed waived; provided, further, that such waiver shall be effective only if at the time the purchaser receives a copy of the Final Public Report, he is notified in writing of his right of refund and cancellation of obligation and the waiver of such right upon his failure to act within the thirty day period.

The specimen Sales Contract filed with the Commission contains, among others, the following provisions:

1. "Seller anticipates BUT DOES NOT WARRANT that the construction contract with the general contractor for the Project will contain a clause similar to Section 13.2.2 of AIA Document A201 which provides in pertinent part that:

'If, within one year after the Date of Substantial Completion . . . , any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition.'

"Seller makes no warranties itself, but Seller agrees that the assignment by Seller to Buyer of any and all warranties given Seller by the General Contractor for the Project, including the above described Contractor's agreement to promptly correct any of its work found to be defective or not in conformance with the Construction Contract for a period of one (1) year after the 'Date of Substantial Completion' of the apartment as defined in the Construction Contract and the benefit of such agreement shall accrue to Buyer on closing without further instruments or documents. Seller hereby agrees to cooperate with Buyer during the effective period of such agreement in asserting any claims based thereon. Buyer acknowledges and agrees that Seller is not adopting the contractor's warranty or acting as co-warrantor but is merely attempting to pass through to Buyer the benefit of any such contractor's warranty, if any.

"Seller shall also assign to Buyer the unexpired term, if any, of any manufacturer's or dealer's warranties covering any furnishings, fixtures and appliances in the apartment. Buyer acknowledges that the Seller is only passing through to Buyer any such manufacturer's or dealer's warranties; Seller is not undertaking to adopt any such warranties or to act as co-warrantor with respect to any furnishings, fixtures or appliances covered thereby. The terms of the manufacturer's or dealer's written warranties are available for the Buyer's examination at the Seller's sales office.

"Except for the agreements set forth above, it is expressly understood and agreed by and between Seller and Buyer that SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APARTMENT, CONSUMER PRODUCTS INSTALLED THEREIN, THE PROJECT OR ANYTHING INSTALLED THEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS OF THE APARTMENT FOR A PARTICULAR PURPOSE."

2. "Reservation Agreement. Notwithstanding any other provision in this Agreement to the contrary, it is expressly understood and agreed that unless and until Seller: (i) obtains the issuance by the Real Estate Commission of the State of Hawaii of the Final Public Report on the project; and (ii) has received from Buyer a fully executed receipt for the Final Public Report, that this Agreement shall represent only a reservation by the Buyer and shall not be binding upon either party hereto, and until such time, this Agreement may be terminated at the option of either party. In the event of such termination, Seller shall cause Escrow to refund all payments previously made by Buyer, without interest, and neither party shall have any other or further liability hereunder. If this Agreement is entered into after the issuance of the Final Public Report, this paragraph shall be of no force or effect and this Agreement shall be fully binding upon Buyer and Seller upon acceptance of this Agreement by Seller as provided in Paragraph 'F-23' hereof."

3. "Buyer hereby agrees for the sole benefit of Seller that until Seller has closed out the sale of all the apartments in the condominium project or until March 31, 1982,

whichever shall first occur, that Buyer will not enter into any 'rental pool' or similar agreement with any purchaser, lessee or owner of another apartment in the condominium project and/or any third party under which Buyer agrees to share expenses and/or rentals of apartments in the condominium project."

4. "Final closing shall occur on the Date of Closing as defined herein. However, Buyer is hereby advised that Seller intends to preclose, regardless of the status of the construction of the apartments, by having all documents necessary for closing executed prior thereto and deposited with Escrow, and Buyer hereby agrees to execute all necessary documents for such closing, including irrevocable escrow instructions, upon request by Seller."

5. "In the event any payment to be made by Buyer hereunder is not made when due, such late payment shall bear interest at the rate of one percent (1%) per month until paid."

6. "At the time of the preclosing described above, Buyer agrees to pay into escrow all sums due from Buyer at closing, excluding only the mortgage proceeds, if applicable, which mortgage proceeds Buyer hereby authorizes Escrow to collect as of the Date of Closing."

7. "Seller is currently purchasing the lands of the project from CONSOLIDATED OIL & GAS, INC., under an option agreement dated December 1, 1976. If the purchase under that option does not occur prior to the closing under this or any prior purchase agreements, this purchase agreement shall become null and void. If this termination occurs, this contract shall likewise terminate, and Seller shall cause Escrow to refund to Buyer all monies previously paid, without interest, less the cost of any credit reports and all other costs including escrow charges incurred by Seller. Seller shall give written notice of such termination to Buyer and a copy thereof shall be given to Escrow. The provisions of this paragraph shall become void and of no effect upon the earlier of the closing of the purchase of said land by Seller or the issuance of the Final Public Report for the project."

NOTE: PROSPECTIVE PURCHASERS SHOULD BE AWARE THAT THE SELLER'S MORTGAGE LOANS (CONSTRUCTION, RENEWALS AND EXTENSIONS) FOR THE PROJECT SHALL BE AND REMAIN AT ALL TIMES A SUPERIOR LIEN ON THE PROJECT, AND PURCHASERS INTENTIONALLY WAIVE AND SUBORDINATE THE PRIORITY OF LIEN UNDER THE SALES CONTRACT IN FAVOR OF THE MORTGAGE LOANS.

NOTE: DEVELOPER ADVISES THAT NO REPRESENTATION OR REFERENCES WILL BE MADE TO EITHER PURCHASERS OR PROSPECTIVE PURCHASERS CONCERNING RENTAL OF THE APARTMENT, INCOME FROM THE APARTMENT OR ANY OTHER ECONOMIC BENEFIT TO BE DERIVED FROM THE RENTAL OF THE APARTMENT, INCLUDING BUT NOT LIMITED TO, ANY REFERENCE OR REPRESENTATION TO THE EFFECT THAT DEVELOPER OR THE MANAGING AGENT OF THE PROJECT WILL PROVIDE, DIRECTLY OR INDIRECTLY, ANY SERVICES RELATING TO THE RENTAL OR SALE OF THE APARTMENT. RENTAL OF THE

APARTMENTS AND THE PROVISIONS OF MANAGEMENT SERVICES IN CONNECTION THEREWITH IS AND SHALL BE THE SOLE RESPONSIBILITY OF THE PURCHASER.


It is incumbent upon the purchaser and the prospective purchaser that he read with care the Sales Contract and the executed Escrow Agreement. The latter establishes how the proceeds from the sale of residential apartments are placed in trusts, as well as the retention and disbursement of said trust funds. The specimen Sales Contract specifically provides that the purchaser approves said Escrow Agreement and assumes the benefits and obligations therein provided.

MANAGEMENT OF THE PROJECT: The By-Laws which are incorporated in the Declaration provide that the operation of the project shall be conducted for the Association of Apartment Owners under the direction of the Board of Directors by a responsible corporate managing agent. The Developer advises that it proposes to appoint as initial managing agent for the project: Aaron M. Chaney Inc., P. O. Box 3169, Lihue, Kauai, Hawaii.

STATUS OF PROJECT: The Developer advises that it estimates construction of the project will begin November 30, 1979.

The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the required Notice of Intention submitted September 7, 1979.

This PRELIMINARY HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1172 filed with the Commission on September 7, 1979. This report when reproduced shall be a true copy of the Commission's Public Report. The paper stock used in making facsimiles must be yellow.


AH KAU YOUNG, CHAIRMAN
REAL ESTATE COMMISSION
STATE OF HAWAII

Distribution:
DEPARTMENT OF TAXATION
BUREAU OF CONVEYANCES
PLANNING COMMISSION, COUNTY OF KAUAI
FEDERAL HOUSING ADMINISTRATION
ESCROW AGENT

REGISTRATION NO. 1172

October 5, 1979

EXHIBIT

1. Apartment Nos. II-24, II-27 and II-30 are located on the ground floor of Building No. 1.
2. Apartment Nos. II-20, II-22, II-25, II-28 and II-31 are located on the first floor of Building No. 1.
3. Apartment Nos. II-21, II-23, II-26, II-29 and II-32 are located on the second floor of Building No. 1.
4. Apartment Nos. II-5, II-8 and II-11 are located on the ground floor of Building No. 2.
5. Apartment Nos. II-1, II-3, II-6, II-9 and II-12 are located on the second floor of Building No. 2.
6. Apartment Nos. II-2, II-4, II-7, II-10 and II-13 are located on the second floor of Building No. 2.
7. Apartment Nos. II-14, II-16 and II-18 are located on the first floor of Building No. 3.
8. Apartment Nos. II-15, II-17 and II-19 are located on the second floor of Building No. 3.

APARTMENT TYPE A: Eight (8) apartments being Nos. II-11, II-12, II-13, II-18, II-19, II-30, II-31 and II-32, are built according to this floor plan, each comprising seven (7) rooms. Each apartment includes two (2) bedrooms, two (2) bathrooms, a living room, a dining room, a kitchen and lanai. Each of these apartments contains approximately 1,588 square feet of floor area, including 251 square feet of lanai, and shall have an appurtenant common interest of 3.125%.

APARTMENT TYPE B: Twenty-four (24) apartments, being Nos. II-1, II-2, II-3, II-4, II-5, II-6, II-7, II-8, II-9, II-10, II-14, II-15, II-16, II-17, II-20, II-21, II-22, II-23, II-24, II-25, II-26, II-27, II-28 and II-29 are built according to this floor plan or its mirror image. Comprising seven (7) rooms, each apartment has two (2) bedrooms, two (2) bathrooms, a living room, a dining room, a kitchen and lanai. Each of these apartments contains approximately 1,536 square feet of floor area, including 251 square feet of lanai, and shall have an appurtenant common interest of 3.125%.